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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/152105

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 11, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on October 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly determined that Petitioner was overpaid child care benefits in the amount of \$7,884.11, for the period of 10/14/12 to 6/30/13.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Keisha Love, Child Care Subsidy Specialist, Senior  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 30, 2013, the agency sent Petitioner a notice indicating that the mother of his child and he were overpaid child care benefits in the amount of \$7884.11 for the period of 10/14/12 to 6/30/2012. This is case [REDACTED] BV referral number [REDACTED]. (Exhibit 3, pgs. 13-18)

3. The mother of Petitioner's child is [REDACTED] (Id.)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 11, 2013. (Exhibit 1)
5. On October 15, 2012, [REDACTED] called the agency and completed a renewal for child care benefits, at which time she reported her address to be [REDACTED] (Exhibit 3, pgs. 19, 51-59) [REDACTED] again reported her address to be [REDACTED], when she completed an on-line Six Month Report Form. (Exhibit 3, pgs. 60-63)
6. [REDACTED] reported her address to be [REDACTED] on a six month report form dated March 2013. (Exhibit 3, pgs. 42-50)
7. Petitioner's mother lives in the lower unit of the same duplex; her address is [REDACTED] (Testimony of Petitioner)
8. Petitioner uses the [REDACTED] address as a mailing address and reported this to the agency in applications/renewals for FoodShare benefits dated 12/26/12 and 6/20/13. (Exhibit 3, pgs. 64 and 67)

### DISCUSSION

An overpayment of childcare benefits occurs when the agency pays benefits in an amount greater than what the recipient was eligible to receive. *Wis. Admin. Code DCF 101.23(1)(g)*

Liability for overpayments, "shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. 49.148, 49.155, 49.157, or 49.19, Stats., during the period that he or she is an adult member of the same household...Liability for repayment of an overpayment shall be joint and several. *Wis. Admin. Code DCF 101.23(3)(a) and (b)*.

In two-parent families both parents in the [assistance group], including step parents and non-marital co-parents, must be participating in approved activities, unless one parent is participating in approved activities and the other parent is: 1) unable to participate in an approved activity due to a disability or health condition, and 2) is unable to care for the child (ren) so that the other parent could participate, due to a disability or health condition. The parent's inability to *both* care for their children and participate in approved activities must be verified by a doctor, psychiatrist, or psychologist.

Eligibility for child care is only for the overlapping hours when both parents are in approved activities.

#### *Wisconsin Shares Child Care Assistance Manual (CCM) §1.4.8.2*

"Assistance Groups are defined as an individual who is a custodial parent or placement parent, and their dependent children, and all dependent children with respect to whom the individual's dependent child is a custodial parent...The Assistance Group also includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual, and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent." *CCM §1.3.8*

The agency contends Petitioner is liable for an overpayment made to [REDACTED] because Petitioner lived with [REDACTED] during the time she received the overpaid benefits. It is also the agency's position that had [REDACTED] included Petitioner in her assistance group, she would not have qualified for benefits because Petitioner was not engaged in an approved activity.

Petitioner does not dispute the fact that [REDACTED] received child care benefits totaling \$7884.11 for the period of 10/14/12 to 6/30/2012, nor does he quarrel with the agency's calculation of the overpayment. While Petitioner

admits using [REDACTED]'s address as his mailing address, he denies the agency's assertion that he was living with [REDACTED] during the time in question.

In order to prove that Petitioner was living with [REDACTED] during the time in question, the agency relied upon the following:

1. A CCAP printout for case 2012SC03165, showing that on October 9, 2012, Petitioner's address was updated to the [REDACTED] address. (Exhibit 3, pg. 29)
2. A print out from My Vote dated November 6, 2012, showing Petitioner's address to be the [REDACTED] address. (Exhibit 3, pg. 3)
3. A KIDS print out indicating that as of July 13, 2013, Petitioner's address was reported to be the [REDACTED] address. (Exhibit 3, pg. 32)

The CCAP printout does not prove that Petitioner was living at the [REDACTED] address, because it would list the [REDACTED] address for Petitioner even if he was only using it as a mailing address.

The print out from My Vote is not sufficient to prove Petitioner was living with [REDACTED] at the [REDACTED] address. The rules of evidence generally do not apply to administrative hearings. Wis. Stat. § 227.45. Nevertheless, administrative decisions cannot be based solely upon uncorroborated hearsay. *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987). Our state supreme court reinforced this principle in *Gehin v. Wisconsin Group Insurance Board*. 2005 WI 16, a decision that overturned a finding based solely upon hearsay information contained in medical records that were contradicted by the petitioner's sworn testimony. The court's rationale is that "the purpose of allowing the admission of hearsay evidence is to free administrative agencies from technical evidentiary rules, but at the same time this flexibility does not go so far as to justify administrative findings that are not based on evidence having rational probative force." *Id.* at ¶54. Because it is unclear who provided the information to My Vote and because Petitioner's testimony contradicts the hearsay information contained in the MyVote printout, it is not sufficient to prove Petitioner was living at the [REDACTED] address.

With regard to the KIDS print out, it actually contradicts the agency's assertion that Petitioner was living at the [REDACTED] address, because between September 18, 2009 and July 13, 2013, Petitioner's address was listed as 3042 N. 24th Place.

It should be noted that the agency provided evidence that contradicted its assertion that Petitioner lived with [REDACTED] at the [REDACTED] address. Specifically, it provided ACCESS applications dated December 26, 2012 and June 20, 2013, in which Petitioner stated that he only used the [REDACTED] address as his mailing address. (Exhibit 3, pgs. 64 and 67) In addition, a report from O'Brien and Associates indicates that they were unable to procure evidence to prove Petitioner and [REDACTED] were living together, though the investigator suspected it. (Exhibit 3, pg. 100) Finally, there is a letter dated December 29, 2012, stating that Petitioner was NOT living at [REDACTED] Upper. (Exhibit 3, pg. 28)

Based upon the foregoing, it is found that that the agency has not met its burden to prove, by a preponderance of the credible evidence, that Petitioner was living with [REDACTED] during the entire overpayment period.

### **CONCLUSIONS OF LAW**

That the agency incorrectly determined that Petitioner and [REDACTED] were overpaid child care benefits in the amount of \$7,884.11 for the period of 10/14/12 to 6/30/13.

**THEREFORE, it is**

### **ORDERED**

The agency rescind the overpayment related to case [REDACTED] BV referral number [REDACTED] and that it cease collection efforts. The agency shall take all administrative steps to complete these tasks within ten days of this decision.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

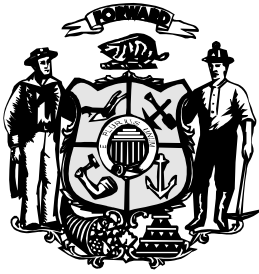
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of November, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 11, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud